NEGLIGENCE—IMPUTED TO PASSENGER.—Plaintiff was injured through the negligence of the railway company concurring with the negligence of one with whom she was riding as guest, she having exercised all the care which ordinary caution would require. *Held,* that the contributory negligence of the driver would not be imputed to the plaintiff. *Shultz* v. *Old Colony St. Ry.* (1907), — Mass. —, 79 N. E. Rep. 873.

The doctrine of imputed negligence in the law of carriers was first laid down in *Thorogood* v. *Bryan* (1849), 8 C. B. 115, which held that a passenger of one common carrier could not recover against a third person for injuries resulting from his negligence, if there was any negligence of the transporting carrier, which was a contributing cause of the injury. This doctrine has since been repudiated in England in *The Bernina,* L. R. 12 P. D. 58; *Mills* v. *Armstrong,* L. R. 13 App. Cas. 1. It has never been received by the United States Supreme Court, *Little* v. *Hackett,* 116 U. S. 366, and the doctrine is now denied by nearly all the state courts. It is followed in Wisconsin, *Lightfoot* v. *Winnipeg,* 123 Wis. 479; in Michigan, *Mullen* v. *Owosso,* 100 Mich. 103; in Montana, *Whittaker* v. *City of Helena,* 14 Montana 124; in Vermont, *Carlisle* v. *Town of Sheldon,* 38 Vt. 440. It has been held in Michigan that the rule does not apply if the person injured was an infant so young as to lack the capacity to make the driver, at whose invitation he was riding as a guest, his agent, *Hampel* v. *Detroit G. R. & W. Ry. Co.,* 138 Mich. 1. With these exceptions the whole weight of authority seems to support the Massachusetts decision. Two very recent decisions are *McBride* v. *Des Moines City Ry. Co.* (1906), — Iowa —, 109 N. W. Rep. 618, and *Loso* v. *County of Lancaster* (1906), — Neb. —, 109 N. W. Rep. 752.

PLEADING AND PRACTICE—REMOVAL OF CAUSES—DISMISSAL—RIGHT TO SUE AGAIN.—Plaintiff brought his suit in a state court for $10,000 for personal injuries, and the action was removed into the federal court because of diverse citizenship and of amount, and, on motion of plaintiff, the action was discontinued and the costs paid by plaintiff. Later plaintiff, upon a new summons and complaint, brought this suit in the state court upon the same cause of action except that the damages were laid in the sum of $2,000. Defendant moved to dismiss all the proceedings on the ground that the state court had no jurisdiction thereof, and that the jurisdiction of said cause was vested exclusively in the United States Supreme Court. The motion was granted and the case appealed to this court. *Held,* that plaintiff could bring an action thereafter in the state court on the same cause of action for such an amount as would give the state court exclusive jurisdiction. *Young* v. *Southern Bell Telephone & Telegraph Co.* (1906), — S. C. —, 55 S. E. Rep. 765.

The judge of the state court based his decision on the rule and reasoning stated in *Baltimore & Ohio R. R. Co.* v. *Fulton,* 59 Ohio St. 575, 53 N. E. 265, 44 L. R. A. 520. That case held that, where a case had been properly removed from a state to a federal court, the jurisdiction of the federal court over the cause of action remains exclusive even though the suit is disposed of in the federal court otherwise than upon its merits, and the jurisdiction of the state court ends forever unless perhaps the case is remanded with the

consent of the defendant. This reason is based on the spirit and policy of the statute, and also that a contrary rule in such cases would be productive of a very inconvenient practice and much abuse. *Cox* v. *East Tenn., Va. & Ga. R. R.*, 68 Ga. 446, is in accord with this view, the court holding that the action cannot be again renewed in the state court because the act of removal *ipso facto* transfers the jurisdiction of the cause to the Circuit Court of the United States, and divests that of the state court. Also by the ruling of the Supreme Court of the United States in the case of *Kern* v. *Hindekoper*, 13 Otto 485 (1880), all further proceedings in the state courts are *coram non judice* and void. Contrary to this view is *McIvery* v. *Florida etc. R. R. Co.*, 110 Ga. 223, 36 S. E. 775, 65 L. R. A. 437, which holds that the commencement of a new action, although for the same cause, is not a reinstatement, but a distinct and independent case. The court further declares: "The act of Congress provides that certain cases may be removed from the state court to the federal court, but this does not mean that the cause of action is removed. The act refers in terms to the 'suit' and not to the 'cause of action.' And therefore until the state court is absolutely deprived of jurisdiction of a particular cause of action it may take jurisdiction of and pass upon the same." In support of this view see, *Hooper* v. *Atlanta etc. R. R. Co.*, 106 Tenn. 28, 60 S. W. 607, 53 L. R. A. 931; *Bush* v. *Kentucky*, 1 Sup. Ct. 625, 27 L. Ed. 354. The United States Supreme Court rule, "that the jurisdiction of a federal court acquired on removal from a state court cannot be ousted or divested by any change of conditions," means, "conditions in the pending suit, as, for example, when the parties become residents of the same state after removal to the federal court on the ground of diverse citizenship." See *Morgan* v. *Morgan*, 2 Wheat. (U. S.) 290, 4 L. Ed. 242; *Clarke* v. *Mathewson*, 12 Pet. 165; *Kanouse* v. *Martin*, 15 How. (U. S.) 198, 14 L. Ed. 660; *Cooke* v. *United States*, 2 Wall. (U. S.) 218, 17 L. Ed. 755; *Kirby* v. *Am. Soda Fountain Co.*, 24 Sup. Ct. 619, 48 L. Ed. 911.

SPECIFIC PERFORMANCE—NOT ENFORCEABLE AGAINST A WIFE TO COMPEL RELEASE OF DOWER RIGHT.—Complainant entered into a contract to purchase land of which she was already in possession. Vendor died before executing the contract, and the property was claimed by the wife, who knew nothing of the contract. In a suit to compel specific performance it was *held*, that suit would not lie against a married woman to compel her to release her dower interest. *Free* v. *Little et al.* (1907), — Utah —, 88 Pac. Rep. 407.

Under what circumstances a court of equity will compel a married woman to join in a conveyance of lands in which she has her inchoate dower interest, courts are not agreed. It is laid down broadly in some of the cases that such a contract cannot be specifically enforced, *Brown* v. *Lapham*, 22 Col. 264; *Stevens* v. *Parish* 29 Ind. 260; *Tevis Representatives* v. *Richardson's Heirs*, 23 Ky. 654. But the rule is to be accepted with this qualification, that if the wife has stood by while purchaser has improved the property, or has committed other acts which would render it inequitable for her to assert her interest, equity will decree specific performance. *Clayton* v. *Frazier*, 33 Texas 91; *Perrine* v. *Mayberry*, 37 Kan. 258; *Overman* v. *Hathaway*, 29